

REFERENCE ROOM

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Application of)

SAINTE PARTNERS II, L.P.)

File No. BPTTL-20040806AAJ

For a Construction Permit for)
Low Power TV Station K67GU,)
Eureka, CA)
Facility ID No. 26852)

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MAR 24 2006

Federal Communications Commission
Office of Secretary

To: The Secretary
Attn: Media Bureau
Video Division

PETITION TO DISMISS OR DENY

BlueStone License Holdings Inc. ("BlueStone"), licensee of station KAEF(TV), NTSC Channel 23, Arcata, California, by its attorneys and pursuant to Section 73.3584 of the Commission's rules, respectfully requests that the Commission dismiss or deny the captioned application of Sainte Partners II, L.P. ("Sainte") for a construction permit for a new low power television ("LPTV") station on Channel 24 at Eureka, California (the "Application"). 1/ Sainte has certified that its proposal complies with the rules enumerated in FCC Form 346, Section III, Question 13, yet the Application specifies a site that is within the protected contour of first adjacent channel KAEF(TV), in violation of the express provisions of Section 74.705(b)(1).

1/ See Public Notice, "Low Power/Television Translators, Class A Television: Proposed Construction Permits," Report No. PGL06-1 (released Feb. 23, 2006) (the "Public Notice"). This petition is timely filed within 30 days of the release of the Public Notice.

facilities, nor properly sought a waiver of the express prohibition contained in Section 74.705(b)(1). Although Sainte's Application as filed on August 6, 2004 included a Longley-Rice (O.E.T. Bulletin 69) analysis purporting to demonstrate that the Channel 24 LPTV proposal would result in a less than 0.5 percent population loss due to interference to any other facility, including KAEF(TV), that analysis provides no support for acceptance of the proposal that is the subject of the *Public Notice*. First, in multiple amendments to the Application since the OET-69 study was performed, Sainte has changed the location of the proposed tower, the height of the tower, the elevation of the antenna, the type of antenna and the maximum effective radiated power of the facility. Second, Sainte's OET-69 analysis utilizes population figures derived from superseded 1990 U.S. Census data. Third, Sainte did not provide any information regarding either the computer application utilized for its analysis, or the study methodology more generally; yet this information is necessary in order for the staff and interested parties to undertake a meaningful evaluation of the study's results.

In any case, even to the extent Sainte believes relief from the clear proscription of Section 74.705(b)(1) might be warranted on the basis of its OET-69 analysis -- an analysis rendered useless by incorrect technical inputs and stale census data -- its cryptic statement in the August 6, 2004 filing that "appropriate waivers are requested" does not constitute a valid or actionable waiver request. *See, e.g., Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (1968) ("When an applicant seeks a waiver of a rule, it must plead with particularity the facts and circumstances which warrant such action."). Under the circumstances, the Application should not have been accepted for filing and now must be dismissed or denied.


KAEF(TV) provides valuable broadcast service to the Eureka community. The Commission's rules, and the information sought in FCC Form 346, are designed to ensure that

the construction of new LPTV facilities does not interfere with this existing full power service. Grant of a proposal that violates Section 74.705(b)(1) -- particularly in light of Sainte's inaccurate certification, the lack of any credible analysis regarding the interference to KAEF(TV) that would result from the proposed facilities, and the absence of an appropriate waiver request -- would undermine the Commission's established procedures and disserve the public interest.

The language of the rule is unequivocal. An LPTV application that specifies a site within the Grade B contour of an adjacent channel full power television station "will not be accepted." Sainte's Application violates the rule and therefore must be dismissed or denied.

Respectfully submitted,

BLUESTONE LICENSE HOLDINGS INC.

By: 

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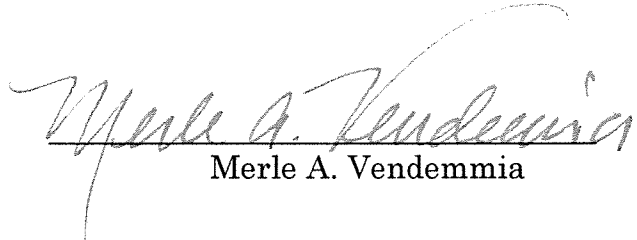
March 24, 2006

CERTIFICATE OF SERVICE

I, Merle A. Vendemmia, legal secretary at the law firm of Hogan & Hartson L.L.P. do hereby certify that on this 24th day of March 2006, I caused a copy of the foregoing "PETITION TO DISMISS OR DENY" to be served *via* first-class mail, postage prepaid, upon the following:

Hossein Hashemzadeh
Media Bureau
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(By Hand Delivery and E-mail)

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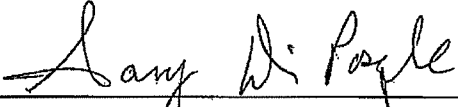

Merle A. Vendemmia

DECLARATION AND VERIFICATION

Sandy DiPasquale hereby deposes and states:

1. I am President of BlueStone License Holdings, Inc., licensee of station KAEF(TV), NTSC Channel 23, Arcata, California.
2. I have reviewed the Petition to Dismiss or Deny the application of Sainte Partners II, L.P. for a new Low Power/Television Translator Station at Eureka, California.
3. The information contained in the Petition to Dismiss or Deny has been provided by persons with knowledge thereof under my direction and is true and accurate to the best of my knowledge, information and belief.
4. I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 24, 2006.



Sandy Dipasquale